

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

FILED BY *M* D.C.

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EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

vs.

CLEVELAND CONSTRUCTION, INC.,

Defendant.

Civ. No. 04-2730-Ma/P

THOMAS J. COULD
CLERK, U.S. DISTRICT COURT
W.D. OF TENN. MEMPHIS

ORDER GRANTING IN PART PLAINTIFF'S MOTION FOR PROTECTIVE ORDER

Before the court is plaintiff Equal Employment Opportunity Commission's ("EEOC") Motion for Protective Order, filed August 25, 2005 (dkt #34). In its motion, the EEOC seeks an order precluding defendant Cleveland Construction, Inc. ("Cleveland") from taking the Rule 30(b)(6) deposition of the EEOC's representative, Audrey Bonner, a supervisory investigator for the EEOC. In the alternative, the EEOC seeks to prohibit the taking of testimony on certain matters listed in Cleveland's Rule 30(b)(6) notice of deposition. On August 31, 2005, Cleveland filed its response in opposition to the motion. On September 6, 2005, the court held an expedited hearing on the motion. Counsel for all parties were present and heard. At the conclusion of the hearing, the court GRANTED in part the motion for protective order as follows:

1. Regarding matter numbers 1, 2, and 4 listed on Cleveland's amended 30(b)(6) notice, Cleveland may depose Ms. Bonner on the underlying facts of the investigation relating to this case, which includes internal communications within the EEOC that relate to the factual information developed during these investigations. However, Cleveland may not question Ms. Bonner about internal communications within the EEOC that would reveal the agency's decision making process, including deliberations, opinions, recommendations or advice. See EEOC v. Airborne Express, No. 98-1471, 1999 WL 124380, at *1 (E.D. Pa. Feb. 23, 1999) (unpublished). Cleveland also may not question Ms. Bonner on communications between EEOC's attorneys and the agency. United States v. Miracle Recreation Equip. Co., 118 F.R.D. 100, 107 (S.D. Iowa 1987).

2. Regarding matter number 3, at the hearing, Cleveland withdrew topic 3 on its amended notice.

3. Regarding matter number 5, the EEOC agreed at the hearing that this topic is an appropriate area of inquiry for Ms. Bonner's deposition.

4. Regarding matter number 6, the EEOC is hereby ordered to supplement its prior discovery responses within two weeks to identify unnamed class members and additional named members who have yet to be formally announced.


5. Regarding matter number 7, the EEOC stated at the hearing that it will not use any statistical, economic, and demographic data at trial.

6. Regarding matter number 8, Cleveland may question Ms. Bonner about references to statistical data contained in the EEOC's investigation files produced during discovery. Moreover, if the EEOC considered any of Cleveland's business records during its investigation, including its employment data or figures, Cleveland may question Ms. Bonner about those records.

7. Regarding matter number 9, Cleveland may not depose Ms. Bonner on this matter. This information should be obtained, if at all, through interrogatories and not a Rule 30(b)(6) deposition of the EEOC's designee.

8. Ms. Bonner shall be deposed within two weeks from the date of this order. After the completion of her deposition, Cleveland shall have two weeks to disclose expert reports.

IT IS SO ORDERED.



TU M. PHAM
United States Magistrate Judge

September 9, 2005
Date



Notice of Distribution

This notice confirms a copy of the document docketed as number 42 in case 2:04-CV-02730 was distributed by fax, mail, or direct printing on September 13, 2005 to the parties listed.

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